IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/03/2004

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

W.P.No. 43482 of 2002

V. Kumar,
S/o. Vellaisamy,
No.97, Radhakrishnan Street,
Nagamalai,
Madurai 19. .....Petitioner

-Vs-

1. The Joint Commissioner /
Executive Officer,
Arulmigu Thandayuthapani
Thirukovil,
Palani.

2. The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Chennai. .....Respondents

Writ Petition, under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioner :: Mr. R. Bharanidharan

For Respondents:: Mr. M. Sriram for R-1

Mr. G. Sukumaran for R-2
Special Government Pleader

:O R D E R

Aggrieved by the order of second respondent herein dated
22.11.2002 , terminating the services of the petitioner from the post of
Technical Assistant in Electrical Division in the first respondent /
Thirukovil, the petitioner has filed this writ petition for issuance of a Writ

of Certiorarified Mandamus, to call for the records and to quash the same and to direct the respondents to reinstate the petitioner in service.

2. Concededly, by the proceedings of the first respondent dated 01.02.1997, the petitioner was appointed as Technical Assistant in Electrical Division in the first respondent / Thirukovil. But, complaining that he was not given posting, the petitioner has approached this Court by way of a writ petition in W.P.No. 8937 of 1997 for issuance of a Writ of Mandamus to direct the respondents therein to permit the petitioner to join duty in the post of Technical Assistant in the first respondent / temple in pursuance of the appointment order dated 01.02.1997.

3. This Court, by an order dated 12.01.2000 made in W.P.No.8937 of 1997 directed the first respondent therein to permit the petitioner to join duty within a period of six weeks from that day and pursuant to the same, the petitioner joined the first respondent / Thirukovil as Technical Assistant in Electrical Division.

4. Thereafter, explaining the need of the post of Technical Assistant in Electrical Division, the first respondent in his proceedings dated 07.06.2001 requested the second respondent to approve the appointment of the petitioner as Technical Assistant in Electrical Division. The first respondent also sent a reminder to the second respondent to that effect on 11.03.2002 and again by another proceedings dated 16 .03.2002. Since no formal approval was obtained from the second respondent, the first respondent by the impugned proceedings dated 22.11.2 002 cancelled the appointment of the petitioner from the post of Technical Assistant in Electrical Division in the first respondent / Thirukovil. Hence, the above writ petition.

5. Mr. R. Bharanidharan, learned counsel for the petitioner assailed the impugned order of termination dated 22.11.2002 on the following grounds:-
(i) the petitioner was not given any reasonable opportunity before passing the impugned order of termination, terminating him from the services of Technical Assistant in Electrical Division in the first respondent / Thirukovil and therefore, the impugned order is in violation of principles of natural justice.
(ii) The cancellation of the appointment of the petitioner as Technical Assistant in Electrical Division in the first respondent / Thirukkovil for want of formal approval of the second respondent is arbitrary, unreasonable and suffers from non-application of mind.

6. Mr. M.Sriram, learned counsel for the first respondent fairly concedes that there is absolute need for the appointment of Technical Assistant in Electrical Division in the first respondent / Thirukkovil and submits that the first respondent is constrained to pass the impugned order, terminating the services of the petitioner from the post of Technical

Assistant only due to the want of formal approval from the second respondent. He also clarifies that there is no Board of Trustees for the first respondent / Thirukovil nor second respondent appointed any fit person for the temple and the entire administration and management of the temple were put in the hands of the Joint Commissioner / Executive Officer, viz., the first respondent herein.

7. Mr. G.Sukumaran, learned Special Government Pleader submits that since there was no formal resolution by the Board of Trustees, the second respondent could not give the approval for the appointment of the petitioner in the post of Technical Assistant in Electrical Division in the first respondent / Thirukkovil. He also fairly concedes that there is no Board of Trustees nor the second respondent appointed any fit person for the first respondent / Thirukkovil.

8. After having carefully considered the submissions of the learned counsel for the petitioner and also the respondents and particularly taking note of the submission of the learned counsel for the first respondent that there is absolute need for the appointment of Technical Assistant in Electrical Division in the first respondent / Thirukkovil, I am inclined to pass the following order:-

(i) The impugned order of termination, dated 22.11.2002 terminating the services of the petitioner from the post of Technical Assistant in Electrical Division in the first respondent / Thirukkovil stands quashed for want of notice to the petitioner ;

(ii) Since there was no Board of Trustees or a fit person for the first respondent / Thirukkovil, the second respondent is directed to take the request of the first respondent for approval of appointment of the petitioner as Technical Assistant in Electrical Division in the first respondent / Thirukkovil with effect from 01.02.1997 as a request made on behalf of the Board of Trustees and pass appropriate orders as expeditiously as possible ;

(iii) The services of the petitioner shall be regularised with effect from 01.02.1997, giving benefit of continuity of service even during the period from the date of impugned order viz., 22.11.2002 till orders are passed by the second respondent approving the appointment of the petitioner ;

(iv) But, the petitioner is not entitled for any monetary benefits for the period from 22.11.2002 to the date of order to be passed as directed above ;

(v) On receipt of the orders from the second respondent, the first respondent shall pass appropriate orders, regularising the services of the petitioner within a period of 15 days thereafter.

9. The writ petition is ordered accordingly. No costs.

Index: Yes

Internet: Yes

Dpn/-

To:
1. The Joint Commissioner /
Executive Officer,
Arulmigu Thandayuthapani
Thirukovil,
Palani.

2. The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Chennai.